

Sample Education Checklist for Juvenile Dependency Hearings

Inquire at each regular hearing for all children:

- ☐ Is child in school? Who holds educational rights? (Until disposition, parent or designee will hold rights.)
- ☐ Order relevant school records, including attendance and grades.
- ☐ Was child expelled, suspended, or involuntarily transferred?
- ☐ Does child participate in extracurricular activities?
- ☐ What are child's reading skills? Are basic literacy programs available?
- ☐ Is child doing better than last six months?
- ☐ Does child have a place to do homework?
- ☐ Who helps child with or checks homework?
- ☐ Does child have a library card?

At each hearing, the judicial officer should make the following inquiries and orders, as appropriate:

Detention or Initial Hearing

- ☐ Is child attending school regularly? Ask parent.
- ☐ Order vision and hearing information.
- ☐ Order complete physical and emotional assessment, if appropriate, for children, ages 0–8.
- ☐ Order relevant school records, including attendance and grades.
- ☐ Does child have an *IEP (individualized education plan)/504 plan*? If so, order it attached to the jurisdiction report.
[An IEP is for a child who receives special education and individualized services under the Individuals with Disabilities Education Act, 20 USC §§1400 et seq.; §504 is part of the Rehabilitation Act, 29 USC §§701 et seq., 794.]
- ☐ If no current school information, order DCFS to refer for and obtain a psychological/educational evaluation.
- ☐ Depending on child's age, is child in preschool readiness program or in correct grade for age?
- ☐ Is child performing at grade level? Is child having academic problems?
- ☐ If it is in the child's best interest, order DCFS to notify school and caregiver to maintain child in school of origin for the duration of the school year, under McKinney-Vento and Educ Code §48853.5. Child may be moved if appropriate.
[See McKinney-Vento Homeless Assistance Act, 42 USC §§11301 et seq.]
- ☐ Order assessment by DCFS of school stability factors. If child outside school of origin, ask why and what steps were taken to keep child in same school.
- ☐ Order temporary appointment of responsible adult under WIC §319(g), as appropriate, to make educational decisions up until disposition or dismissal.
- ☐ If child was exposed prenatally to drugs or alcohol, was born premature, or is medically fragile, order a referral to a Regional Center, depending on local protocol.

Jurisdiction Hearing

- ☐ Is child in school of origin? If not, why not? Is child enrolled in some school?
- ☐ If educational issues present the main risk to the child:
 - ☐ Order parent, and/or DCFS to assist parent or caretaker, to request a special education or 504 assessment and/or an SST (Student Success/Study Team) meeting at school site. May also provide parent or caretaker with form to request a concurrent referral for a mental health assessment pursuant to Gov C §§7570 et seq. ("AB 3632").

- ❑ After the assessment is completed, schedule hearing to receive completed IEP. If parents pose no other risk, consider (a) terminating jurisdiction or (b) ordering family services and informal supervision, without declaring child a dependent, under WIC §360(b).
- ❑ If educational issues exist but do not present the main risk to the child, determine whether there are unmet education or special education needs:
 - ❑ If it appears that child has special needs, order DCFS to assist caretaker to prepare a written request for an assessment. (*You may not make orders to a school district.*)
 - ❑ Order any IEP's, school records, and court-ordered assessments to be attached to the disposition report.
- ❑ If child is not in need of special education but is not succeeding:
 - ❑ Order tutoring in any way available under the law.
 - ❑ Order DCFS and parent/caretaker to initiate an SST meeting. Get copy of plan for file. Be aware of follow-up date.
 - ❑ Order case conference with DCFS, minor's attorney, minor's therapist, and parent/caretaker to identify psychological or environmental barriers to learning (too many placements, child has PTSD, ADD, or ADHD, no home enrichment, child dealing with being out of home and trauma).
- ❑ Ages 14–15:
 - ❑ Order participation in emancipation program, such as e-STEP (Early Start to Emancipation Program).
 - ❑ If child has an IEP, it should identify transitional goals.
- ❑ Ages 16–termination of jurisdiction:
 - ❑ Order TILP (transitional independent living plan) for emancipation.
 - ❑ If child has an IEP, it must provide transitional *vocational* services.
 - ❑ If appropriate, check graduation credits. DCFS and caretaker to check “graduation checklist.”
- ❑ Is child progressing?
- ❑ If child has an active IEP, is it being implemented?

Disposition Hearing

- ❑ Review school records.
- ❑ Review school stability—for each school move, require DCFS to list what factors determined move and steps taken to keep in school.
- ❑ If child is behind, determine by assessment whether problem is environmental (too many schools, not enough schools, no home enrichment), physical (neurological, vision, hearing), or educationally based (special education needs).
- ❑ Make **WIC §361(a) decisions** regarding any limits on parent/legal guardian's right to make educational decisions:
 - ❑ If educational rights are not removed from parent, remind parent of his or her right and obligation to advocate for child's educational needs.
 - ❑ If educational rights are removed, you must name a “responsible adult” to advocate for child's educational needs (may be a relative caretaker, a nonrelative extended family person, a stepparent with whom the child lives, a CASA, or, under certain circumstances, a foster parent, but not the social worker or group home administrator). [34 CFR §300.20.]
 - ❑ If educational rights are removed and there is no responsible adult, the *school district* must appoint a surrogate parent. Fill out form JV-535, the mandatory order form. DCFS to send this form to the school and get the school's response on form JV-536.
 - ❑ Surrogate parent must meet with child at least one time before IEP.
 - ❑ If there is no responsible adult, surrogate parent, or authorized foster parent, court may make educational decisions with input from interested persons.

- ❑ Determine whether there are unmet educational/special education needs and, if so, make the appropriate orders:
 - ❑ If it appears that child may be in need of special education services, order DCFS to assist parent or responsible adult in requesting in writing an assessment of child. (*You may not make orders to school district.*)
 - ❑ If child already has been found eligible for special education services, determine whether:
 - ❑ The IEP is current.
 - ❑ Child is making progress.
 - ❑ Services in the IEP are being provided.
 - ❑ Ages 14–16 and 16–22 orders:
 - ❑ Order relevant school records, including attendance, grades, and current IEP (if it exists) to be attached to the next court report.
 - ❑ If child in suitable placement, determine if child is to remain in school of origin pursuant to AB 490 [Stats 2003, ch 862].
 - ❑ Has school scheduled 30-day IEP hearing under Educ C §56325?

Review Hearings

- ❑ School stability—is child progressing?
- ❑ Is parent stable enough to move to termination pursuant to an appropriate IEP (day treatment, residential)? Order transition services or referrals for TBS (therapeutic behavioral services) and wrap around services, if necessary, to move child home.
- ❑ Check graduation credits.
- ❑ If recommendation is to terminate jurisdiction, check IEP and make sure all community resources for the family are in place.
- ❑ If child's permanent plan is a planned permanent living arrangement, use WIC §366.27 to authorize the caretaker to make educational decisions.
- ❑ Order relevant school records, including attendance, grades, and current IEP (if it exists) to be attached to the next review report.

Joinder Procedure

If at any time special education services are **not** being provided to a child who has an IEP, consider directing child's counsel to (a) bring a joinder motion [WIC §362(a)] to subject the school district to dependency court jurisdiction or (b) file a compliance complaint with the Department of Education.

- ❑ Counsel files joinder motion.
- ❑ Court sets a hearing with 30 days' notice. Use form JV-540.
- ❑ Court determines:
 - ❑ What legal duty is owed to the child, and what agency may be joined.
 - ❑ Whether obligation has been met and, if not, what orders are appropriate to provide obligated services.

Caution: No joinder may be brought unless administrative remedies or compliance complaints have been exhausted or are futile.

- ❑ If available locally, refer education issues to a panel of community attorneys who are willing to take education cases through the administrative process (sometimes called a "317(e) referral"). [See WIC §317(e).]